

2



BERKELEY WOMEN'S LAW JOURNAL

LAW LIBRARY
 JUL 26 1988
 UNIVERSITY OF CALIFORNIA
 BERKELEY

1987-88 Volume 3



BERKELEY WOMEN'S LAW JOURNAL

SUBSCRIPTIONS: The *Berkeley Women's Law Journal* is a publication which is wholly edited and produced by students of Boalt Hall School of Law, University of California, Berkeley. Subscriptions are \$100/Sponsor, \$30-99/Friend, \$30/Institution, \$15/Regular, \$8/Low Income. The first two categories are tax deductible. Subscriptions may be ordered from the *Berkeley Women's Law Journal*, Boalt Hall School of Law, University of California, Berkeley, California 94720. Telephone: (415) 642-6263.

Berkeley Women's Law Journal is published annually by the student editors of the University of California Law School, Berkeley, California. Publication number is ISSN 0882-4312.

MANUSCRIPTS: We invite you to submit your original, unpublished work to the *Berkeley Women's Law Journal*. Please send typed copies with wide margins. Submitted manuscripts cannot be returned unless the author so requests, and provides a self-addressed stamped envelope. The *Berkeley Women's Law Journal* also welcomes research proposals, and may assist authors in developing topics within our mandate area.

FORM: Citations generally follow *A Uniform System of Citation* (14th ed. 1986) and Webster's Standard American Style Manual (1985).

Dedication

The Journal would like to dedicate this issue to Marge Shultz, Clare Dalton, and Eleanor Swift, and all other feminist scholars who are still fighting tenure battles in attempts to diversify our law schools.

The Journal would also like to express its grateful appreciation for the continuing support and guidance of Herma Hill Kay and Ellie Young.

© 1988 Berkeley Women's Law Journal
University of California, Boalt Hall School of Law
Berkeley, California 94720

"Power" is reprinted from *The Black Unicorn* by
Audre Lorde, by permission of the publisher, W.W. Norton
& Co., Inc. Copyright © 1978 by Audre Lorde.



Published annually by the
Berkeley Women's Law Journal
Printed by Joe Christensen, Inc.

Designed by Kate Godfrey
Logo designed by June Beltran

Volume three represents a transition in the life of the *Berkeley Women's Law Journal*. We are now publishing annually, and hope to publish a symposium issue in addition to our regular volume next year. Our subscription base has broadened and, with luck, the desperate shoestring operation of recent years is over. For the first time, many of the articles in the volume fulfill our commitment to giving voice to the concerns of underrepresented women—including women of color, lesbians, and poor women. Along with the growth of feminist legal scholarship, we have matured into a more established, ongoing organization.

However, the battle is not over for the *Journal* or for feminist scholars, as evidenced by Harvard Law School's recent decision to deny tenure to Clare Dalton. As a journal, we experience great difficulty in attracting articles which speak to our mandate of presenting scholarship directed towards concerns of underrepresented women. The realities of the tenure process make publishing in mainstream law reviews understandably more attractive for many untenured scholars. Many writers, too, are constrained even before the point of publication to choose topics which conform to traditionally rigid notions of "scholarship."

Despite these obstacles, we remain fully committed to our mandate. We hope to serve as a much-needed forum for an alternative scholarship that speaks to the diversity of the feminist agenda. We seek to provide resources to empower law students to speak out in class and challenge the body of values transmitted to them as doctrine by an often homogeneous faculty. We aspire also to serve practitioners who are working to use the law in new and creative ways to help address the realities of women's lives.

As always, we hope that our readers will not only find the *Journal* a useful tool and a source of empowerment, but that you will join us in our continuing efforts to contact and support authors who are writing on the concerns of women, particularly those of underrepresented women. Only through assisting each other to find rooms of our own, and by standing together against those who devalue women's scholarship, can we realize our desire that all of our collective voices be heard.

The Editorial Board of the
Berkeley Women's Law Journal



BERKELEY WOMEN'S LAW JOURNAL

1987-88

Volume 3

COMMENTARY

- Where We Stand:
*Observations on the Situation of
Feminist Legal Thought* 1
Clare Dalton

ARTICLES*

- Batson v. Kentucky:
Will It Keep Women on the Jury? 14
Shirley Sagawa

- California's GAIN:
*Greater Avenues or a Narrow Path? The
Politics and Policies of Welfare Reform
and AFDC Work Programs in the 1980s* 49
Ann VanDePol,
Katherine E. Meiss

- Second Parent Adoption:
*When Crossing the Marital Barrier
Is in a Child's Best Interests* 96
Emily Patt

- The Necessity for State Recognition of
Same-Sex Marriage:
*Constitutional Requirements and
Evolving Notions of Family* 134
Alissa Friedman

*It is the policy of the *Berkeley Women's Law Journal* not to draw a distinction between student pieces and the work of scholars, practitioners and community workers.

BOOK REVIEWS

Origins of Protective Labor Legislation
for Women, 1905-1925

By *Susan Lehrer*

171

Reva Siegel

Women's Work & Chicano Families:
Cannery Workers of the Santa Clara Valley

By *Patricia Zavella*

188

Maria Blanco

Review Essay:

When Is Rape a Crime?

Real Rape

By *Susan Estrich*

193

Lynne N. Henderson

Board of Editors 1987-88

Editors-in-Chief

Merri Baldwin and Janet Helson

Managing Editor

Debra Fischer

Business Editors

Carolyn Ham
Miriam Stompler

Research Editor

Madeline Kass

Solicitations Editor

Jean Hyams

Articles Editors

Lillian Hamrick
Em Herzstein
Caroline Newkirk
Anne Preston
Marnie Sayles

Book Review Editor

Robin Miller

Production Editor

Karen Kennard

Associate Editors

Jennifer Atkins

Laura Fashing

Emily Patt

Lisa Peterson

Members

Jill Burtis
Lori Chamberlain
Juliette Davison
Elizabeth Denney
Susan Huber
Diana Kallas
Miranda Kane
Nancy Kim
Kate Laner
Paula Lee
Evelyn Loeb
Mindy Macauley

F. Forrest Martin
Tomas Medina
Karen Moore
Jacqueline Ortega
Beth Povell
Tricia Reilly
Elinor Roberts
Denise Rosales
Joanna Ruppel
Serafina Sands
Sharon Silverman
Linda Vallin

National Advisory Board

Herma Hill Kay
Professor of Law
University of California, Berkeley
Faculty Advisor

Roberta Achtenberg
Directing Attorney
Lesbian Rights Project, San Francisco

Lynn B. Cooper
Professor of Social Work
Director, Women's Studies
Program
California State University, Sacramento

Hon. LaDoris Hazzard Cordell
Judge
Santa Clara County Municipal Court

Constance de la Vega
Managing Attorney
Legal Aid Society of Alameda County

Anna de Leon
Private Attorney at Law
Berkeley

Mary C. Dunlap
Civil Rights Attorney
San Francisco

Carmen A. Estrada
Staff Attorney
Western Center on Law and Poverty, Inc.

Margaret Fung
Executive Director
*Asian American Legal Defense and
Education Fund, New York*

Donna J. Hitchens
Civil Rights Attorney
Hitchens & Brenner, San Francisco

Arlie Hochschild
Professor of Sociology
University of California, Berkeley

Emma C. Jordan
Professor of Law
Georgetown University Law Center

Hesung Chun Koh
Director Emeritus
*Human Relations Area Files, Inc.
New Haven*

Linda J. Krieger
Attorney at Law
Oakland

Judith E. Kurtz
Associate Director
Equal Rights Advocates, San Francisco

Jean Love
Professor of Law
University of California, Davis

Carrie Menkel-Meadow
Professor of Law
University of California, Los Angeles

Eva Paterson
Assistant Director
*San Francisco Lawyers' Committee for
Urban Affairs*

Andrea L. Peterson
Acting Professor of Law
University of California, Berkeley

Deborah L. Rhode
Associate Professor of Law
Stanford University

Marjorie M. Shultz
Lecturer with Security of
Employment
University of California, Berkeley

Judith Stacey
Associate Professor of Sociology
University of California, Davis

Kathryn H. Tijerina
Director, Indian Resource
Development Department
New Mexico State University

Karen Tokarz
Professor of Law
Washington University, St. Louis

Hon. Diane E. Watson
State Senator
28th District, Los Angeles

D. Kelly Weisberg
Associate Professor of Law
*Hastings College of the Law,
San Francisco*

Wendy Williams
Associate Professor of Law
Georgetown University, Washington, D.C.